

United States District Court

EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

CELESTE DAVIS

v.

COLLIN COUNTY COMMUNITY
COLLEGE DISTRICT and SUR-SCAN

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Case No. 4:09cv309
(Judge Schneider/Judge Mazzant)

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636. On February 18, 2010, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Collin County Community College District's Motion to Dismiss Plaintiff's Second Amended Complaint for Failure to State a Claim Upon Which Relief can be Granted be DENIED, and Sur-Scan's Motion to Dismiss Plaintiff's Second Amended Complaint for Failure to State a Claim upon which Relief can be Granted be GRANTED in part and DENIED in part. It was further recommended that Plaintiff's claims against Sur-Scan for sex discrimination, equal protection and DTPA be DISMISSED with prejudice.

The Court has made a *de novo* review of the objections raised by both Defendants. Sur-Scan objects that the Magistrate Judge's report did not recommend dismissal of the ADA claim. However, in its motion to dismiss, Sur-Scan did not move to dismiss the ADA claim based on the argument it is now making in its objections. Therefore, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. For the

reasons stated herein, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court.

It is, therefore, **ORDERED** that Collin County Community College District's Motion to Dismiss Plaintiff's Second Amended Complaint for Failure to State a Claim Upon Which Relief can be Granted (Dkt. #31) is DENIED, and Sur-Scan's Motion to Dismiss Plaintiff's Second Amended Complaint for Failure to State a Claim upon which Relief can be Granted (Dkt. #33) is GRANTED in part and DENIED in part.

It is further **ORDERED** that Plaintiff's claims against Sur-Scan for sex discrimination, equal protection and DTPA are DISMISSED with prejudice.

IT IS SO ORDERED.

SIGNED this 8th day of March, 2010.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE